vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.417 OF 2006
IN
SUIT NO.3451 OF 2005

Nusli N. Wadia & Ors. ... Plaintiffs

V/s.

Dr.Nutan Gulam Irani ... Defendant

Mr.P.Ghandy i/b Crawford Bayley & Co. for Plaintiffs
Ms.N.P. Karnik for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 22, 2006**

P.C.:

. The claim in the Motion is that the Plaintiffs should be permitted to evict the defendant, who is residing in the premises on account of her employment with the plaintiffs as an Anesthetist. It is the case of the plaintiffs that they have terminated her services by letter dated 30.3.2002. The defendant has challenged the termination of her service before the Labour Court by filing complaint (ULP) No.13 of 2001 under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 which is pending adjudication. Recording of evidence has already commenced. The defendant is to be cross examined by the plaintiff. It is the case of the plaintiffs that they are unable to recruit other Anesthetists in service because of the defendant’s insistence on continuing to reside in the service quarters. The Plaintiffs contend that anesthetists are not willing to take up employment

because of lack of service quarters.

2. Heard Counsel for the parties. I am of the view that the Plaintiffs have made out a prima facie case for grant of ad-interim relief. There is no gainsaying that an anesthetist would be required to be on the campus, round the clock. Apart from this, the plaintiffs are correct in contending that the defendant has no vested right in continuing in the premises although her complaint before the Labour Court is pending. The Labour Court and the Industrial Court have rejected the interim relief sought by the Defendant to continue in the service quarters.

3. The defendant claims that she is unable to vacate the premises and acquire new premises in view of the fact that the plaintiffs are not ready and willing to pay her legal dues consequent upon her termination from service.

4. In my view, the following order would meet the ends of justice:

i) The Plaintiffs shall pay all the legal dues and terminal dues payable to the defendant including the provident fund, gratuity and any other dues payable to her.

ii) The defendant shall vacate the premises

within four weeks from today.

iii) The payment of the legal dues shall be simultaneous with the Defendant vacating the quarters.

iv) The defendant shall file an undertaking in this Court to the effect that the amount paid to her will be returned to the plaintiffs in the event she succeeds in her complaint before the Labour Court and she is directed to be reinstated in service, within one week from today.

5. This order shall not affect the rights and contentions of the parties before the Labour Court in complaint (ULP) No.215 of 2002.

6. Mrs.Karnik, on instructions from the Defendant, who is present in Court in today, undertakes that the defendant will not create any third party rights or induct any person into the suit flat viz., Flat No.3, Doctor’s Quarters, Nowrosjee Wadia Maternity Hospital, Acharya Dhonde Marg, Parel, Mumbai-12, till she vacates the premises as aforesaid. Undertaking to be filed within one week.

7. Motion is disposed of accordingly.